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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,548	04/08/2004	Eugene Jarvis	0114066-010	8369
7590 11/16/2004			EXAMINER	
Adam H. Masia BELL, BOYD & LLOYD LLC P.O. Box 1135 Chicago, IL 60690-1135			RADA, ALEX P	
			ART UNIT	PAPER NUMBER
			3714	

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/820,548

Applicant(s)

JARVIS ET AL.

Examiner

Alex P. Rada

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-62 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/8/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-62 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-43 of U.S. Patent No. 6,726,427. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-43 of the U.S. Patent No. 6,726,427 "anticipate" application serial number 10/820,548 of claims 1-62. Accordingly, the application of claims 1 are/is not patentably distinct from U.S. Patent No. 6,726,427 of claims 1-43. Here, U.S. Patent No. 6,726,427 of claims 1-43 requires elements of dealing two cards as a first set of cards dealt to each of the player's hands and two cards as a first set of the cards dealt to the dealer's hand, one of which is dealt face up, determining whether to "double down," "split pairs," "take insurance" or "surrender" with respect to the player's hand as allowed by the applicable rules, deciding a single point value to which each of the player's hands will be hit to, hitting each of the player's hands automatically until a value of each of said hands is at least the point value, playing out the hand of the dealer according to the applicable rules, and determining which of the player's hands are winning

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hands while the application of claims 1-62 only requires elements of dealing a plurality of cards to each of the player's hands, each of the cards in the player's hands having a value, deal a plurality of cards to the dealer's hand, one of the cards being dealt face up, each of the cards in the dealer's hand having a value, determine a point value for each of the player's hands, the point value for each of the player's hands being based on the values of the cards in the player's hand, enable the player to input a single point value for determining when the point value of each of the player's hands satisfies a predefined relation to said single point value, deal one or more additional cards to each of the player's hands until the point value for each of the player's hands satisfies the predefined relation, determine a point value for the dealer's hand, said point value being based on the values of the cards in the dealer's hand, deal one or more additional cards to the dealer's hand unless or until the point value of the dealer's hand satisfies predefined criteria, and determine which of the player's hands are winning hands. Thus it is apparent that the more specific U.S. Patent No. 6,726,427 of claims 1-43 encompasses the application of claims 1-62. Following the rationale in *In re Goodman* cited in the preceding paragraph, where applicant has once been granted a patent containing a claim for the specific or narrower invention, applicant may not then obtain a second patent with a claim for the generic or broader invention without first submitting an appropriate terminal disclaimer.

Conclusion

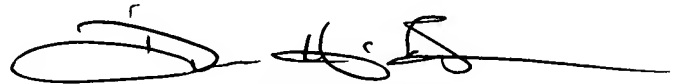
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex P. Rada whose telephone number is 703-308-7135. The examiner can normally be reached on Monday - Friday, 08:00-16:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 703-308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


APR



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